

25



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/993,812      | 11/16/2001  | John J. Kilper       | ALVY 7552US         | 8522             |

1688 7590 05/12/2003

POLSTER, LIEDER, WOODRUFF & LUCCHESI  
763 SOUTH NEW BALLAS ROAD  
ST. LOUIS, MO 63141-8750

EXAMINER

RIDLEY, RICHARD

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3651

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/993,812

Applicant(s)

KILPER ET AL.

Examiner

Richard Ridley

Art Unit

3651

-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2001 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948).
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 1-14, invention I, in Paper No. 4 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The claims are indefinite and are replete with grammatical errors. The following are only some examples of such errors since there are too many errors to indicate in their entirety. The claims should be examined closely to correct the errors.

Claim 1 recites the limitation "the actuators" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the zone" in line 13. This is unclear. Which zone is being referred to? Does this recitation refer to the "upstream" zone of line 12 or the zone in which the actuator providing the signal lies in? As written the claim is unclear.

Art Unit: 3651

Claims 2, 6 recite the limitation "the actuator". Which actuator is being referred to?

Plural actuators are previously claimed.

Claims 5, 10 recite the limitation "the sensor". Which sensor is being referred to? Plural sensors are previously claimed.

Claim 10, line 7-8 appears to be grammatically incorrect. The phrase "when the conveyor is not accumulating cartons and while accumulating cartons". The phrase appears to be contradictory.

Claim 11 is run-on without appropriate use of punctuation rendering the claim unclear appearing to have grammatical errors. The phrase "...cartons are by conveying cartons..." is unclear.

Claim 12 recites the limitation "the dummy sensor". Which dummy sensor is being referred to? Plural dummy sensors are claimed in claim 12.

### ***Claim Objections***

5. Claim 3 is objected to because of the following informalities:

➤ Claim 3 incorrectly depends from itself

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3651

7. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiesser et al.

‘225. Schiesser discloses a similar accumulating device comprising a(n):

- First plurality of zones (fig. 1)
- Sensor (9) disposed within each of the zones
- Actuator (14) that allows movement of the sensor between an up position wherein the sensor is capable of contacting the cartons and a down position (fig. 19) wherein the sensor is not capable of contacting the cartons

#### *Examiner's Note*

8. Regarding lines 10-13, the examiner notes that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Lines 10-13 recite a manner in which the device is intended to be employed and therefore does not differentiate the claimed apparatus from the prior art apparatus that satisfies the claimed structural limitations. Schiesser ‘225 discloses all of the structural limitations of the claims.

#### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Ridley whose telephone number is (703) 306-5910. The examiner can normally be reached on Mon-Thur 7:00 am - 5:15 pm.

Art Unit: 3651

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 308-0552 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Richard Ridley', with a stylized flourish at the end.

Richard Ridley  
May 6, 2003

Richard Ridley  
Examiner  
Art Unit 3651